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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 United States of America,

10 Plaintiff,

11 v.

12 Dennis Lawrence, et al.,

13 Defendants.
14

No. CV-23-01091-PHX-JAT

ORDER

15 On February 4, 2025, this Court issued an order summarizing the status of this case
16 as follows:

17 In this case, the United States filed a seven-count complaint. (Doc.
18 1). In short summary, the United States seeks to foreclose on a piece of real
property to satisfy some outstanding tax debts of some of the Defendants.

19 The United States has reached a resolution of counts one through six
with the interested Defendants. (Docs. 36 and 47). What remains pending
is count seven: to foreclose the federal tax liens on the subject real property.
20 (Doc. 1 at 14). The United States has reached a resolution of count seven
with all but one Defendant. (Docs. 36 and 47). To attempt to reduce the
21 foregoing resolutions to judgment, the United States has moved for a partial
judgment pursuant to Federal Rule of Civil Procedure 54(b). (Doc. 47).

22 The unresolved Defendant, PennyMac Loan Services LLC
23 (“PennyMac”), opposes the entry of a Rule 54(b) judgment. (Doc. 48).
PennyMac undisputedly has a lien on the property the United States seeks to
foreclose. PennyMac opposes the Rule 54(b) judgment because such a
24 judgment on count seven against the Lawrence Defendants would permit
foreclosure of the property—which PennyMac argues would extinguish its
25 priority lien on the property.

26 The United States disputes whether PennyMac’s lien would be
extinguished. (*See generally* Doc. 60). Instead, the United States asserts that
it will stipulate that PennyMac’s lien would be satisfied first out of any sale
27 proceeds. (*Id.*). Further, the United States represents that certain Lawrence
28 Defendants will be allowed to keep the real property during a forbearance

1 period¹ prior to sale, and that those Defendants will be required to make the
 2 mortgage payments and pay the real property taxes. (Doc. 47 at 4; Doc. 60
 3 at 3 (also stating that the Lawrence Defendants must “maintain” the
 property)). Alternatively, the United States asserts that it will pay the
 property taxes as necessary. (Doc. 60 at 6).

4 (Doc. 63 at 1-2) (footnote in original).

5 The Court then summarized the United States’ proposed resolution as follows:

6 ...as the Court understands it, the United States will foreclose upon receiving
 7 a Court order. The Lawrences will have a life estate in the property, during
 8 which the Lawrences must pay the mortgage (which the United States says
 is not delinquent). (Doc. 60 at 7; 8). If the Lawrences default on the
 9 mortgage, they forfeit their life estate and the United States will sell the
 property. (*Id.*) The United States will stipulate that PennyMac will be paid
 first out of the sale proceeds. (Doc. 60 at 8 (“Pennymac will be paid from
 10 the proceeds of a sale and as stated above, the United States will agree that
 Pennymac’s deed of trust is senior to its federal tax liens.”)). The amount
 PennyMac will be paid cannot be determined today because today’s
 11 outstanding principal balance will be reduced by whatever principal
 payments are made via the mortgage payments during the period of the life
 12 estate.

13 (*Id.* at 2-3).

14 The Court then required PennyMac to file a reply in support of its motion for
 15 summary judgment to address why the foregoing potential resolution is unacceptable. (*Id.*).
 16 PennyMac has timely filed the required reply and continues to assert that its “priority” in
 17 the property must be determined. (Doc. 64).

18 PennyMac’s reply contains the following statement: “...it is undisputed
 19 Pennymac’s deed of trust has priority over the IRS’s tax liens...” (Doc. 64 at 2). This
 20 statement is inconsistent with this Court’s understanding of the record. Specifically, the
 21 Court understands that to *settle* this case, the IRS has agreed to *stipulate* that PennyMac’s
 22 lien has priority over the IRS tax liens. However, in the absence of a settlement, the IRS
 23 has two arguments that PennyMac should not be paid “first.”

24 First, the IRS argues that it *may*, but is not required, to recognize the senior interest
 25 of a purchase money mortgage. (Doc. 60 at 5). Second, the IRS argues that regardless of
 26 whether the IRS or PennyMac has a superior lien, by statute the IRS must pay costs and

27
 28 ¹ The forbearance period effectively gives certain Lawrence Defendants a life estate in the
 real property subject to certain conditions. (Doc. 49 at 6).

1 state property taxes first out of any sale proceeds; thus, PennyMac cannot have “first”
2 priority. (Doc. 60 at 6).

3 Because PennyMac continues to press that its “priority” must be determined, and
4 because that priority is intertwined with all other interests in the property, the Court cannot
5 grant a Federal Rule of Civil Procedure 54(b) judgment. Specifically, for this Court to find
6 there is “no just reason for delay” such that it should enter judgment under Rule 54(b) the
7 Court must weigh certain considerations.

8 First, the Court must determine whether it is “the ‘appropriate time’” to
9 appeal. *Curtiss-Wright Corp.*, 446 U.S. at 8 (quoting *Sears, Roebuck & Co.*
10 *v. Mackey*, 351 U.S. 427, 435 (1956)). To do so, the Court must first assess
11 “juridical concerns,” such as “the interrelationship of the claims so as to
12 prevent piecemeal appeals in cases which should be reviewed only as single
13 units.” *Id.* at 10. Then, the Court exercises extraordinarily broad discretion
14 to weigh the equities of the case before it. *Id.* at 10–11. “Whether a final
15 decision on a claim is ready for appeal is a different inquiry from the equities
16 involved, for consideration of judicial administrative interests ‘is necessary
17 to assure that application of the Rule effectively preserves the historic federal
18 policy against piecemeal appeals.’” *Wood*, 422 F.3d at 878 (quoting *Curtiss-*
19 *Wright Corp.*, 446 U.S. at 8).

20 “Juridical concerns” counsel against granting Rule 54(b) certification,
21 where the “legal right to relief stems largely from the same set of facts and
22 would give rise to successive appeals that would turn largely on identical,
23 and interrelated, facts.” *Wood*, 422 F.3d at 880. “A similarity of legal or
24 factual issues will weigh heavily against entry of judgment under the [R]ule,
25 and in such cases a Rule 54(b) order will be proper only where necessary to
26 avoid a harsh and unjust result” *Morrison-Knudsen Co. v. Archer*, 655
27 F.2d 962, 965 (9th Cir. 1981). Indeed, due to its crushing caseload, the Ninth
28 Circuit Court of Appeals simply “cannot afford the luxury of reviewing the
same set of facts in a routine case more than once without a seriously
important reason.” *Wood*, 422 F.3d at 882.

20 *Gomez v. EOS CCA*, CV 18-2740-PHX-JAT (Doc. 86 at 2-3) (D. Ariz. Aug. 12, 2020)
21 (footnote omitted).

22 As discussed more fully below and in this Court’s order at Doc. 63, this Court cannot
23 resolve the interests of the Lawrences and the IRS in this property without resolving
24 PennyMac’s interests. Thus, a partial judgment under Rule 54(b) would run afoul of the
25 policy against piecemeal appeals. Accordingly, the IRS’s request for a Rule 54(b)
26 judgment (Doc. 47) and the motion for judgment against only the Lawrence Defendants
27 (Doc. 36) will be denied.

28 To clarify the Court’s prior understanding of this case, PennyMac’s true objection

1 to the settlement is that once the IRS forecloses, PennyMac's *right to foreclose* will be
2 extinguished (not its right to payment). (Doc. 64). PennyMac complains that
3 hypothetically, even after the forbearance period ends (either because the Lawrences leave
4 the property or because the Lawrences cease making their mortgage payments), the IRS
5 could choose to not proceed with a sale for an unspecified period of time, leaving
6 PennyMac with no recourse to receive payment in a timely manner. Thus, PennyMac
7 seemingly seeks some hybrid approach wherein the IRS is allowed to foreclose, but then
8 PennyMac's lien would be reinstated such that PennyMac retains a right to foreclose on
9 the IRS once it is the owner of the property. This is not a remedy the IRS seeks, nor one
10 the Court is inclined to craft.

11 Instead, the remedy the Court can provide is adjudication of the actual counts of the
12 complaint, including Count VII (the foreclosure count). The Court's ruling on such count
13 would not include any of the settlement options heretofore discussed. Instead, the IRS may
14 seek immediate foreclosure against the Lawrence Defendants (which the Lawrence
15 Defendants may choose to oppose) and the IRS can argue for its priority over PennyMac.
16 In other words, if this case proceeds to Court adjudication, the IRS's offered compromise
17 positions for purposes of settlement would not bind the IRS.

18 Thus, to allow this case to proceed to resolution, and with the understanding that
19 ruling on PennyMac's motion for summary judgment implicates all parties' interests in
20 Count VII, the Court will direct the IRS to file a motion for summary judgment seeking
21 final resolution of all counts in this case. The IRS may move for summary judgment
22 arguing that PennyMac should be bound by the IRS's settlement with the Lawrences.
23 However, the IRS MUST (even if it is in the alternative) move for summary judgment
24 asserting its argument to foreclosure in the event the Court determines that PennyMac can
25 block the IRS's settlement with the Lawrences. Specifically, the IRS must argue for its
26 proposed resolution of this case if this case proceeds to foreclosure (the remedy sought in
27 Count VII) now. Because this would be inconsistent with the settlement agreement, all
28 Defendants (including the Lawrences) may oppose summary judgment.

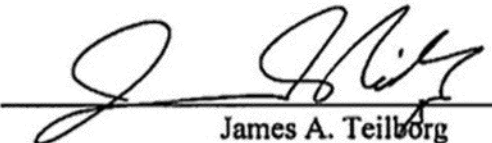
1 Based on the foregoing,

2 **IT IS ORDERED** that the Motion for Rule 54(b) judgment (Doc. 47) is denied.

3 **IT IS FURTHER ORDERED** that the motion for judgment against the Lawrence
4 Defendants (Doc. 36) is denied without prejudice.

5 **IT IS FURTHER ORDERED** that within 14 days of the date of this Order, the
6 IRS must move for summary judgment against all Defendants as specified above.

7 Dated this 18th day of February, 2025.

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12 James A. Teilborg
13 Senior United States District Judge
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